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SPECIAL REPORT

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ABOUT THE REPORT

Very little of the recent voluminous literature in English that has discussed Hamas has focused on how to understand—and perhaps influence—its behavior from an Islamic point of view. We have analyzed Hamas's statements and actions since its inception and have concluded that Hamas has indeed undergone significant political changes as well as certain slow, limited, and carefully calculated ideological shifts. It is now at the point where it is ready to explore arrangements that will allow it and Israel to coexist without episodic violence. Its readiness is based on the framework of Islamic law (shari'a) in which Hamas is embedded. Shari'a both provides the basis for the political actions that Hamas can take and defines which actions are forbidden to it.

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Paul Scham and Osama Abu-Irshaid

Hamas

Ideological Rigidity and Political Flexibility

Editor's Note

Discussion in the United States regarding Hamas is usually framed by two somewhat contradictory assumptions: (1) that Hamas is ideologically incapable of evolving to accept the existence of Israel and (2) that isolation and strong pressure are the only tools that may force it to recognize Israel. This controversial report challenges both assumptions. On the one hand, the authors make a case for recognizing that Hamas has already, in certain respects, changed and has sent signals regarding its possible coexistence with Israel. On the other hand, they conclude that Hamas might never "recognize" Israel in the conventional sense and that, since Hamas apparently cannot be eliminated, attempts to engage it must take into account its commitment to the strictures of shari'a.

In other words, the report attempts to inject some gray areas into an issue that is often framed only in black and white terms. In a unique approach, the authors do not ask us to necessarily change our conclusions about the value of such engagement. Instead, they invite us to reevaluate our assumptions by providing a new prism through which to analyze Hamas. The authors themselves—one Jewish and the other Muslim—have very different lenses on this conflict. They disagree on the definition of the conflict and have differing views of how it can be resolved, but they share the goal of providing a framework for understanding Hamas, its motivations, and its self-concept, and of presenting alternative criteria for interpreting the signals that it sends. The authors neither endorse Hamas's actions or positions nor advocate taking Hamas's claims at face value, and they certainly do not argue that Israel, the United States, and the West should drop demands for changes by Hamas. On the contrary, they offer a framework to help policymakers develop and deliver such demands more effectively, a framework that takes into account how Hamas views itself and how many in the Muslim world understand the movement. With U.S. allies such as Egypt and Jordan pressing for a Palestinian unity government inclusive of Hamas, it is imperative to consider what kinds of conditions and safeguards would contribute to a successful peace process rather than derail it.

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JUNE 2009

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ABOUT THE INSTITUTE

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Even if readers accept the authors' interpretation of Hamas's thinking, many may still question whether engagement is worthwhile, particularly given—as the report describes—the limits for Hamas to compromise and the very real risk of renewed and potentially more dangerous conflict should a truce end. Others advocate engagement, even in Israel where the debate remains robust and diverse. Experience with intractable conflicts in Northern Ireland, Aceh, and elsewhere suggests that ideologically rigid movements can change over time and that a peace process itself can play a critical role in shaping such an evolution. The report argues that it is not inevitable that Hamas will accept coexistence, only that its acceptance is more likely if framed within its Islamic ideology.

In a region where hopes for peace have been raised and dashed again and again, cynicism is the biggest obstacle facing the Obama administration's new peace initiative. While no one should be expected to trust blindly, repeated failures to achieve a lasting solution to this seemingly intractable conflict suggest that a reexamination of our assumptions and our analytical frameworks is essential.

Summary

- Although peaceful coexistence between Israel and Hamas is clearly not possible under the formulations that comprise Hamas's 1988 charter, Hamas has, in practice, moved well beyond its charter. Indeed, Hamas has been carefully and consciously adjusting its political program for years and has sent repeated signals that it may be ready to begin a process of coexisting with Israel.
- As evidenced by numerous statements, Hamas is not hostile to Jews because of religion. Rather, Hamas's view toward Israel is based on a fundamental belief that Israel has occupied land that is inherently Palestinian and Islamic.
- For Hamas, "recognition" of Israel would represent a negation of the rightness of its own cause and would be indefensible under Islam. It considers unacceptable for itself the actions of those Muslim countries that have recognized Israel, such as Egypt and Jordan, and those that have indicated their willingness to do so, such as Saudi Arabia and the rest of the Arab League, because they have provided no theological justification for their policies toward Israel.
- Although Hamas, as an Islamic organization, will not transgress shari'a, which it understands as forbidding recognition, it has formulated mechanisms that allow it to deal with the reality of Israel as a *fait accompli*. These mechanisms include the religious concepts of *tahadiya* and *hudna* and Hamas's own concept of "Palestinian legitimacy."
- *Tahadiya* refers to a short-term calming period between conflicting parties during which differences are not put aside. A *tahadiya* stopped most violence between Hamas and Israel from June to December 2008.
- *Hudna* is a truce for a specific period, which is based on the practice of the Prophet Mohammad and on subsequent events in Muslim history. Hamas has indicated on a number of occasions its willingness to accede to a *hudna* with Israel, assuming basic Palestinian rights as set forth in the Arab Peace Initiative (API) are agreed to first.
- Palestinian legitimacy is a term employed by Hamas to describe its willingness to consider accepting a binding peace treaty, such as the proposal set forth in the API, so long as the treaty is first ratified by the Palestinian people in a referendum. Although Hamas would not directly participate in peace negotiations with Israel, Hamas has indicated that it would be willing to be part of a Palestinian coalition government with Fatah under which Fatah would negotiate the actual treaty.

- Although a peace process under such circumstances might, for Israelis and Westerners, seem involved, arcane, and of dubious utility, it is necessary to consider the possibility of such a process because there is no realistic scenario under which Hamas will disappear. Understanding the Islamic bases of Hamas's policies and worldview will be essential for the success of any process in which it is engaged.

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Introduction

Hamas's landslide victory in the Palestinian parliamentary elections of January 2006 came as an unwelcome and unexpected shock to both Middle Eastern and international regimes, with the organization winning nearly 58 percent of the Palestinian Legislative Council seats.¹ The United States, a number of European nations, and Israel had all issued clear warnings before the elections that they would not deal with a Palestinian Authority led by Hamas. Based on usually reliable polling, they had concluded that Hamas was unlikely to win an absolute majority.

But what was not anticipated or imagined had become a reality. The day after the elections, the United States, Europe, and Israel awoke to a tricky question: how to reject dealing with a democratically elected movement that had attained a parliamentary majority in what were clearly free and fair elections? This quandary was particularly galling as it presented itself in the context of the Bush administration's initiative aimed at spreading democracy in the Middle East. The history of the subsequent three years following the election is well known, so we will simply flag several crucial junctures here:

- In February 2007, Hamas and Fatah formed a short-lived coalition following Saudi mediation (the "Mecca Agreement").
- Hamas won exclusive control of the Gaza Strip in June 2007 in violent clashes with forces loyal to Fatah and President Abbas.² Israel and the United States immediately reopened relations with the non-Hamas government that emerged in the West Bank, led by the independent Salim Fayyad.
- In June 2008, Hamas and Israel, through Egyptian mediation, initiated a six-month *tahadiya* (calming), which was moderately successful in ending most of the rocket attacks that Hamas and other groups had been launching at southern Israel from Gaza. As its six-month expiration approached, both sides maintained that they wanted to renew the *tahadiya*, with Israel demanding that Hamas first bring an absolute end to the rocket attacks and Hamas demanding that the crossings into Gaza first be reopened.
- Announcing its determination to end the rocket attacks, Israel launched a massive artillery and air bombardment of Gaza on December 27, 2008. A week later it began a ground offensive. A new cease-fire (actually two unilateral cease-fires) came into force on January 17, 2009, with Hamas vowing defiance and Israel announcing that it had "achieved its aims."

The strategy adopted by the Bush administration and the Kadima-led Israeli government did not significantly change in that period. Although there has since been a significant change of government in both countries, the strategy of both the United States and Israel was and still is based on the following assumptions:

- Hamas is irrevocably opposed to recognizing or coming to terms with Israel's existence (two very different concepts, as we will show).
- Economic, political, and military pressure will affect the Hamas regime either by prying away its popular base, forcing it to modify its behavior significantly, or (most

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desired and least likely) destroying it as an organization. With the economic and political strategies largely supported by most Western countries, all three means have been employed to date, with few positive results.

- Direct talks with Hamas are pointless and likely to be counterproductive, because there is nothing to talk about. This assumption is reinforced by Hamas's virtually identical stance with regard to its talking with Israel, though Hamas is eager to talk with the United States.

While we—the authors of this report—are convinced that Hamas will not in the foreseeable future recognize Israel in any conventional sense, we hope to show that, far from being a fanatic organization mindlessly repeating its mantra of destroying Israel, Hamas has been carefully and consciously adjusting its political program for years and has sent repeated signals that it is ready to begin a process of coexisting with Israel. We argue that these signals should not be ignored or dismissed by Israel or the West because, as the following examination of Islamic jurisprudence and Hamas's ideological underpinnings and political realities indicates, it may be possible for Israel to deal with Hamas. We also believe that there is little choice for either side: neither side is going to disappear. Thus, we think coexistence is not only necessary—but also possible.

While our research in both primary and secondary sources has persuaded us that the pattern of statements and actions we detail leads to the conclusion that coexistence on the terms we discuss is possible, we fully recognize that political analysis is not an exact science and that other interpretations are possible.

Intellectual Background and Ideology

As the first Palestinian *intifada* (uprising) erupted in mid-December 1987, a group of the Muslim Brotherhood's leaders in the Gaza Strip met in the house of Sheikh Ahmed Yassin. There, they established *Harakat al Muqawama al Islamiyya* (the Islamic Resistance Movement), best known by its Arabic acronym "Hamas" (zeal), as a framework for the representation of the Muslim Brotherhood in the activities of the *intifada*. On December 14, 1987, the movement issued its first communiqué, stating in part:

The intifada of our vigilant people in the Occupied Territories comes as a resounding rejection of the occupation and its pressures.... It also comes to awaken the consciences of those among us who are gasping after a sick peace, after empty international conferences, after treasonous partial settlements like Camp David. The intifada is here to convince them that Islam is the solution and the alternative.³

The establishment of Hamas represented the culmination of a decade-long attempt by the Muslim Brotherhood's leadership in Gaza to establish an armed force to confront Israel.⁴ Previous attempts had been thwarted by Israeli security, which considered secular and leftist forces, such as the Fatah, then led by Yasser Arafat, and the Popular Front for the Liberation of Palestine (PFLP), as the more significant enemy. Thus, Israel generally maintained an ambivalent attitude toward Islamist activity, hoping that it would diminish support for the secular nationalists.

Less than a year later, Hamas issued its charter (or covenant), which has continued to define the organization in Western eyes.⁵ The charter is an unapologetically hard-line document that vividly promises destruction to Israel. The charter's language and tone contrasts with many of the notably softer individual statements made by Hamas's leaders both before and after the issuance of the charter, in which they indicate a greater possibility of compromise. Indeed, judging from the organization's lack of reference to the charter and from the statements since made by Hamas's leaders, the charter does not appear to be a major influence on Hamas's actions.⁶ Even so, it remains Hamas's public face in the eyes of much of the world and thus requires examination.

Article 1 of the charter characterizes Hamas as an Islamic movement, with “Islam as its doctrine and source of notions, concepts, and perceptions regarding the universe, life, and man; and by which Hamas’s conduct is governed, inspired, and guided righteously.” Article 2 defines Hamas’s ideological identity and orientation as an extension of the intellectual school of the Muslim Brotherhood, which is referred to as “a global organization, the largest Islamic movement in the modern era, [which] features deep understanding, precise perception, and a comprehensive approach to all Islamic concepts in various spheres of life.”⁷

Thus, Hamas’s conceptual framework, including its approach to Palestinian nationalism, is unequivocally rooted in Islam. For example, Article 11 of the charter affirms “that the land of Palestine is an Islamic *waqf* (trust) endowed for Muslim generations until the Day of Resurrection, and should not be compromised entirely or partially, or relinquished entirely or partially.” Article 13 states that “various initiatives of [settlement], and the so-called peaceful solutions and international conferences to resolve the Palestinian issue contradict the tenets of the Islamic Resistance Movement, as compromising any part of Palestine is equivalent to the omission of a part of our religion.” Hence, according to the same article: “[There is] no solution to the Palestinian cause save *jihad* (religious struggle); for initiatives, proposals, and international conferences are nothing but a waste of time and absurd nonsense; and the Palestinian people are too dignified and righteous to allow tampering with its future, rights and self-determination.” In Hamas’s communiqué of December 7, 1993, issued to commemorate the sixth anniversary of the *intifada*, the movement reiterated that “*jihad* is the only way to liberate Palestine, and that force is the only language of understanding with the enemy.”

Hamas was organized on the basis of rejecting Israel and its existence. Article 9 defines the objectives of Hamas—“fighting, humiliating, and defeating untruth in order for truth to prevail; wresting the homeland.” It states further that “from its mosques, the call for prayer [*adhan*] shall start over announcing the establishment of the state of Islam.”⁸ This is reasserted in Hamas’s twenty-eighth communiqué, issued on August 18, 1988, which states that “Palestine is Islamic from the [Mediterranean] sea to the [Jordan] river” and that Hamas’s purpose is the liberation of “Palestine, all of Palestine.”

Does this declared ideology of rejecting Israel and denying its right to exist necessarily mean, in practice, that it is impossible to deal with Hamas or come to terms with its ideological and political discourse? A simple reading certainly suggests that that is the case. Nevertheless, we believe that these hard-line, unequivocal assertions do not necessarily reflect the movement’s current positions, which have evolved over time. There is a wide disparity between the movement’s early *ideological assertions*, which were composed at its inception, and much of its *everyday political conduct* and discourse. Indeed, the movement’s actions and direction cannot be understood without recognizing this distinction.

There is a wide disparity between the movement’s early ideological assertions, and much of its everyday political conduct and discourse.

Concept of Jews and Israel

Hamas has referred to Jews and Israel in various ways. On the one hand, Hamas’s charter and early statements clearly advocate extinguishing the state of Israel and replacing it with Palestine and make references to a “religious” conflict between both Judaism and Islam and Jews and Muslims. Article 7 of the charter quotes the famous *hadith*:⁹ “The Day of Judgment will not come about until Moslems fight the Jews (killing the Jews), when the Jew will hide behind stones and trees. The stones and trees will say ‘O Moslems, O Abdulla, there is a Jew behind me, come and kill him.’”¹⁰

There is a tension among Muslim scholars between those who rely on *hadith* such as this to frame the conflict in religious terms and more recent authorities who frame it in terms of land and nationalism and who cite different versions of the same *hadith* that suggest this latter meaning.¹¹ Despite the choice to include this particular *hadith*

in the charter, Hamas has generally tended toward the latter interpretation, especially since it has made clear that it sees itself as the vanguard of the Palestinian national movement, not simply as an Islamist party.

In making various traditional anti-Semitic accusations, the charter draws on the mythology of the notorious *Protocols of the Elders of Zion*, an anti-Semitic forgery commissioned by the czarist secret police in the early years of the twentieth century and republished many times since, most recently in numerous Arabic editions. Article 22 of the charter refers specifically to Jewish (or Zionist, the words seem to be used interchangeably) control of media, finance, Freemasonry, etc., and states that Jews are responsible for World Wars I and II.

Does this not stamp Hamas as irrevocably anti-Semitic? We believe that Hamas's literature and statements during the movement's early years reflect a genuine confusion over how to deal with Jews, a confusion which has been resolved by the eventual adoption of a much clearer position that reflects hostility to actions by Jews against Palestinians and not hostility to Jews simply on the basis of belief or because they are Jewish.¹² The charter itself contains statements that reflect a lack of hostility toward Jews on the basis of religion—for example, as article 31 states, "Under Islam, the followers of the three [monotheistic] religions: Islam, Christianity, and Judaism may coexist peacefully and safely." Whether or not one accepts the statement as true, it is incompatible with claims of a religious obligation to kill Jews.

There are many statements by Hamas leaders that fully accept a Jewish presence in Palestine. In Hamas's early stages, Sheikh Yassin introduced the concept of equality and citizenship among the people of different faiths who live in historic Palestine, provided that Palestinian refugees were granted a return to their homes and those of other faiths submitted to Muslim rule.¹³ Years later, Khalid Meshal, chairman of Hamas's political bureau, similarly put forward the principle of equal citizenship for Christians and Jews living in historic Palestine and not the less equal principle of *Ahl al dhimmah*, or *dhimmi*—the Islamic jurisprudential historical term for non-Muslims (mainly Christian and Jews) who belong to "protected" religions but who must also pay a special tax.¹⁴

Article 13 of the charter rejects negotiations and peace with Israel, because Hamas had concluded that the processes to date had not and would not provide justice for the Palestinian people. Indeed, at the time of its establishment, Hamas opposed any settlement that demanded any concession from Palestinians concerning the entirety of Palestine, including UN Security Council Resolution 242. This view has changed with time, but Hamas, for political and ideological reasons,¹⁵ has chosen not to amend its charter. Nevertheless, without directly recognizing Israel as a nation, Hamas now accepts the two-state solution as part of its "phased liberation" of Palestine, which is a fundamental change of policy opening the door to coexistence with Israel.

Although "phased liberation" could be understood simply as a longer-term euphemism for Israel's destruction, we believe that interpreting it as such would be a misreading of Hamas's intentions in using the phrase. Rather, we believe that the policy of "phased liberation" is part of a slow ideological shift that might allow Hamas to coexist with Israel. Although Hamas is in certain respects a prisoner of its own ideology, it compensates for this by adjusting its political goals to fit reality as it perceives it. We believe that there is evidence that the policy of "phased liberation" is part of a qualitative change in Hamas's political strategy and goals. To be clear, destruction of Israel is still an *ideological* goal of Hamas, but this change reflects the *political* realization that Israel's destruction is simply not possible for the foreseeable future. This fundamental change transfers the conflict to a potential "cold war" (such as that between the United States and the USSR), where "normal" relations could eventually be envisaged even while destruction is still promised by both sides.

How is Hamas a prisoner of its own ideology and why can it not simply, if grudgingly, accept Israel, as Muslim countries such as Turkey, Jordan, and Egypt have? It is precisely

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because Hamas is existentially embedded in Islamic theology. For Hamas to deny this basic principle, it would exclude itself from the group of those who take Islam seriously as a political guide. In other words, it would negate its own *raison d'être*.

Peace Initiatives and Truces

This rigidity is essential to Hamas because it is undeniably the current view of most mainstream Islamic scholars that Palestine is an inalienable part of the Muslim homeland and thus cannot be ruled by non-Muslims. Moreover, it is particularly sacred because it contains the third most important city for Muslims, after Mecca and Medina. This is the basis for Hamas's denial of any *right* for Israel to exist. That said, Hamas draws a very clear distinction between Israel's right to exist, which it consistently denies, and the *fact* of its existence, and it has stated explicitly that it accepts the existence of Israel as a *fait accompli*.¹⁷ It thus sidesteps what it sees as an insuperable theological obstacle to formal recognition and moves the argument to the political arena, where it has more room to maneuver. Hamas has shown it is perfectly cognizant of the undeniable facts that Israel is part of the Middle East status quo, that it is a major regional power, and that it is recognized as a state by a number of Arab and Muslim countries and by the Palestine Liberation Organization (PLO) on the basis of the Oslo Accords. Hamas does not ignore these realities. However, it must, because it takes Islamic theology seriously, seek a theological justification before it determines how to come to terms with them.

The era that witnessed Hamas's inception imposed on the movement a reality that differs significantly from the one experienced by other Palestinian resistance organizations. Most of them, almost all secular and leftist, arose in the 1950s and 1960s during the height of the Cold War. This period preceded any Arab recognition of Israel, at a time when there was virtual unanimity in the Arab and Muslim world regarding Israel's illegitimacy.¹⁸ Hamas, on the other hand, emerged only in the late 1980s and early 1990s, at a time when the map of international relations was in a state of major upheaval, transformed fundamentally by the demise of the Soviet Union and the Eastern European Communist bloc and the emergence of the United States as the world's sole superpower.¹⁹ Among other consequences, this suddenly removed the source of a significant portion of the Arab world's military support, especially for its leftist organizations and regimes.

By that time, Egypt had already opened diplomatic relations with Israel and others were secretly dealing with it. Egypt's peace with Israel in 1979 had effectively taken the Arab military option for dealing with Israel off the table. Shortly after Hamas's inception came the Iraqi defeat in the first Gulf War and the subsequent acceptance by most Arab countries of the American call for a framework for peace negotiations with Israel at the Madrid Conference in October 1991. Although Hamas came into existence as the voice of Palestinian Islamism opposed to recognizing Israel, the question of recognition had been in the air from the beginning. The old certainty of complete rejection was no longer realistic.

These factors created great pressures on the nascent movement. The solid ideology associated with it was simply not suited to the swiftly changing political climate in the region at that time. Therefore, despite remaining (formally) ideologically stringent, Hamas found itself, from the beginning, pushed toward political flexibility. Two factors allowed this strange balancing act to take place. First, the expansive nature of traditional Islamic jurisprudence provided legitimacy for Hamas to adopt flexible policies in light of the difficult and challenging reality. Second, Hamas benefited from the decades-long experience of flexibility and ideological adaptation embodied in the Muslim Brotherhood's *modus operandi*. This point has been missed by many Western researchers whose conceptual frameworks do not comprehend Hamas's combination of relative ideological stringency with political flexibility and adaptation.

Hamas draws a very clear distinction between Israel's right to exist, which it consistently denies, and the fact of its existence.

Hamas's positions regarding the political process and Palestinian-Israeli negotiations can be understood in three stages: in the first stage, it maintained a principled position of refusing political resolution without elaborating on its reasoning; in the second stage, it refused to consider the implications of any political settlement that entailed a waiver of any rights or entitlements of the Palestinian people; and in the third stage, it declared its willingness to accept a truce with Israel under certain conditions but maintained that there would be no recognition of Israel's legitimacy in the land of Palestine. To these three stages, we may also add a fourth stage, namely the acceptance of a short-term temporary truce (*tahadiya*) with conditions less stringent than those that would be required for a longer-term truce (*hudna*), as discussed later.

As these stages suggest, Hamas has progressed from a traditional ideologically consistent and rigid position to one in which it is taking account of the political reality and dealing with it, without an ideological acknowledgment. The question is whether the third stage represents an intermediate phase that may lead toward eventual coexistence with Israel or whether it is simply a tactic in a strategy whose aim is the "phased liberation" or phased destruction of Israel.²⁰

In fact, we believe that this combination of ideological stringency and political flexibility has been present in certain respects from the inception of the organization. At precisely the time when Hamas's founders wrote its charter and when its communiqués announced its principled opposition to the peace process and to negotiations with Israel, a number of Hamas's political leaders already held significantly more flexible and realistic positions. For example, Dr. Mahmoud Al-Zahar (Hamas's current foreign minister) privately submitted a plan to then Israeli foreign minister Shimon Peres (Israel's current president) in March 1988 that proposed both an "expedited" resolution to the conflict and a "deferred" one. Although Dr. Al-Zahar submitted the plan as a person "close to" Hamas and not as an official of the organization, the "expedited" resolution indicated acceptance of a two-state solution in which the entire West Bank, East Jerusalem, and the Gaza Strip would be returned to the Palestinians. However, the plan ignored the issue of recognition of Israel, since it was conceived of within the ideology of an Islamic—that is, undivided—Palestine.²¹ In retrospect, we can see this proposal as the harbinger of a future qualified acceptance by Hamas of the two-state solution.

This plan developed into what we have referred to earlier in the report as "phased liberation," that is, the establishment of a Palestinian state in the West Bank and Gaza Strip, with Jerusalem as its capital, on the proviso of no recognition for Israel, leaving the task of liberating historic Palestine for future generations. As Muhammad Nazzal, a member of Hamas's political bureau, stated: "We are for any 'phased solution,' but without recognizing the Israeli enemy or its existence.... That is we do not oppose any Israeli withdrawal from any part of Palestine provided that [there is] no recognition for Israel."²² This position was frequently restated by Sheikh Yassin and other Hamas leaders.

If not recognition, what would Hamas leaders be willing to offer Israel in return for accepting a "phased solution"? Hamas would agree to a *hudna* or truce—that is, to a suspension of military actions against Israel for a specific period, such as ten to twenty years.

In letters sent from prison in October 1993, Sheikh Yassin was the first Hamas leader to publicly advocate a truce with Israel.²³ He proposed a truce for ten or twenty years, provided that Israel would withdraw from the West Bank, East Jerusalem, and the Gaza Strip without conditions and that the Palestinian people would be at full liberty to exercise self-determination and pursue their own future.²⁴ Since that time, this offer has become the official position of the movement.

The truce option gained further impetus with a 1994 political initiative advanced by Moussa Abu Marzuq, then the chairman of Hamas's political bureau. The initiative was significant because it came in the form of a semicomprehensive settlement offer. Abu Marzuq offered a truce in return for four terms: (1) an unconditional Israeli withdrawal

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from the West Bank, Gaza Strip, and (East) Jerusalem; (2) the dismantling of settlements and removal of all settlers from the West Bank, Gaza Strip, and [East] Jerusalem; (3) compensation to the Palestinian people for their losses and victimization resulting from the occupation; and (4) the holding of free general legislative elections for the Palestinian people at home and abroad to choose their real leadership and representatives. This elected leadership alone would be empowered to express the will of the Palestinian people.²⁵

A few days after the initiative was announced, the movement's political bureau issued a clarifying communiqué declaring that the initiative proposed by its chairman did *not* include recognition of Israel or of UN Security Council Resolution 242. Likewise, it did not imply any compromise of the Islamic character of Palestine or of the prohibition of conceding an inch of it.

These examples are not brought up to imply that these are offers that Israel could have accepted at the time but, rather, to show that Hamas is not ideologically committed to oppose the two-state solution and that it has been considering various options, including a two-state solution, nearly since its inception. However, Hamas has never indicated that a two-state solution could be permanent.

If this is indeed the case, why does Hamas insist on introducing the notion of a truce with Israel while refusing to talk of a peace treaty or to accept Israeli-Palestinian agreements? Are such proposals, as Israel and the United States insist, merely a tactic—that is, is Hamas merely waiting to destroy Israel at a point when Hamas might be stronger?

The most basic answer is grounded in Hamas's Islamic reference system, which holds that, according to the tenets of shari'a, it is unlawful to recognize Israel since it is founded on aggression, injustice, and the usurpation of Muslim land—that is, Palestine. This view is supported by dozens of *fatwas* (Islamic edicts) by Muslim scholars who have prohibited the recognition of Israel under any circumstance. Palestine's land, according to these scholars, constitutes a *waqf*, and no portion of it may be surrendered, of whatever size.

This explains Hamas's rejection of the agreements signed between Israel and the PLO, including the Oslo Accords and those based on the accords. Because Hamas believes that the accords gave the Palestinians much less than their due under the international resolutions related to the conflict, it refuses to accept the prerequisite of recognizing Israel. Thus, Hamas is not against negotiations as a mechanism to resolve the conflict; rather, it rejects the terms of these negotiations and their anticipated outcome. According to prominent Hamas leader Mahmoud Al-Zahar, negotiations by themselves are not prohibited in Islamic jurisprudence; what is prohibited are the specific concessions that resulted from the Oslo process without a corresponding benefit to the Palestinians.²⁶ It should be noted, however, that Hamas sufficiently relaxed this very premise to permit it to participate in the 2006 legislative elections, which were held under the Oslo process.

Islamic Jurisprudence

The Prophet Muhammad's life and the experience of Islamic history and jurisprudence offer an alternative to an unending war. A *hudna* provides a mechanism to wait until circumstances might change and the Muslim situation might improve while, presumably, one's adversaries are making a similar calculation. Thus, we may assume that Hamas's central position has remained the same from its inception regarding the issue of its overall objective, which is the total "liberation" of historic Palestine from the Mediterranean Sea to the Jordan River. If it talks about a "phased solution," it does so because there is no current possibility of realizing the notion of total "liberation." Out of loyalty to its central ideological conviction regarding the entirety of Palestine, and

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based on Islamic history and jurisprudence, Hamas refuses to recognize Israel’s right to exist in the context of any “phased solution.” Instead, it offers a temporary truce. The ideological conundrum for Hamas is to square this circle: to find an acceptable Islam-based means of coexisting with Israel so that the “phased solution” it advocates can acquire political viability.

The Concept of Hudna

Muslim scholars define *hudna* as an agreement to cease hostilities with combatants for a period of time with or without mutual stipulations. Juridical texts describe it as peace and quiet, a calm, a truce, an armistice, and at times a form of reconciliation.²⁷ It is derived from two Qur’anic verses: “This is a declaration of disassociation from Allah and His messenger to those whom you have made a treaty among the polytheists” (9:1), and “And if they incline to peace, so you must predispose (yourselves) to it” (8:61). In the other main source of Islamic legislation, the prophetic tradition, that is, *hadith* and the practices of the Prophet, we find numerous examples of the Prophet Mohammad implementing *hudnas* (of various durations) with pagan Arab tribes. The best-known example referenced to authenticate the practice of *hudna* is the Treaty of Hdaybiyah of 628 CE with the pagan Arabs of Mecca. Although it was set to last for ten years, it did not last for more than two years due, Islamic sources record, to Meccan violations.

Based on the experience of the Prophet Mohammad, Muslims throughout their history have acquiesced to *hudnas* as a long-term yet impermanent exit strategy to long and debilitating wars. Perhaps the most prominent example invoked by Muslims in this context is the Treaty of ar-Ramleh in 1192. Muslim scholars have ruled that a *hudna* is to be sanctioned in battle only as a last resort and specifically prohibit a *hudna* unless the following four conditions are met:

1. The signatory to it must be the Imam or his deputy.
2. There must be a manifest advantage for the Muslim side. If the Muslims do not obtain a clear advantage over the other, it is not permissible.
3. It must be free of ill-conceived conditions, such as Muslim captives remaining in enemy hands.
4. It has to be confined to a defined period of time.²⁸

Scholars have differed over the prescribed duration of a *hudna*. Some hold that it may not exceed four months. Others view durations of one, two, three, or four years as permissible. However, the majority of scholars hold that a *hudna* may last up to ten years, citing the Prophet Mohammad’s terms for the Treaty of Hdaybiyah.²⁹ Still other scholars have stated that a *hudna* may extend beyond ten years if the interest achieved clearly outweighs the benefits of continued warfare.³⁰ Despite these differences of opinion, there is a consensus among Muslim jurists that an open-ended or, more specifically, a permanent *hudna* is prohibited. Their reasoning is that a *hudna* without a time certain will lead to the nullification of jihad.³¹

Hudna as Understood by Hamas

As noted, Hamas leaders suggested a *hudna* in the first year that the movement was established, because they fully realized that the movement was incapable of defeating Israel anytime soon. The idea behind Hamas’s proposal for a *hudna* in 1993 materialized as a counterweight to the emerging Oslo peace process. Hamas maintained that the leadership of the PLO was forced into the accords under regional and international pressure. To Hamas, the PLO’s actions were indefensible in Islamic terms.

Sheikh Hassan Yousef, a prominent Hamas leader in the West Bank, developed a particularly important interpretation of *hudna* that has been adopted by Hamas. He makes a clear distinction between a *hudna* and the signing of accords or a peace agreement:

The term *hudna*... articulates the status of conflict with the enemy... It expresses the continuity of conflict... but does not convey an end to the conflict. Hence *hudna* is a political and military endeavor linked to an appraisal of the situation and the realistic facts, and is buttressed by calculation of the lofty interests of the *umma* [the Muslim nation] and the people. *Hudna* does not appear in Islamic history and jurisprudence in the context of capitulation and surrender to the enemy. Nor does it appear in the context of concessions of land, holy sites and legitimate rights.³²

Based on such formulations, the concept of *hudna* became a constant in Hamas's political platform, and the movement came to rely on a group of present-day *fatwas* to provide it with the needed umbrella of religious cover. Predictably, Hamas's more hard-line antagonists have attacked its credibility by claiming that it has thereby turned its back on its ideological principles, questioning whether there is a distinguishable difference between the accords signed by the PLO with Israel and the *hudna* with Israel proposed by Hamas.

However, the juridical edicts relied upon by Hamas focus on the *hudna* as an Islamic mechanism based on specific conditions that render it permissible, distinguishing the *hudna* from the agreements signed by the PLO in four ways:

1. The *hudna* would offer no recognition to Israel and no historical concessions. Recognition would render any accord null and void.
2. The *hudna* would be restricted to a time certain, in direct contrast to the agreements signed by the PLO with Israel, which are intended to constitute a permanent settlement.
3. Because Hamas does not envision a situation in which it would relinquish its right to the rest of historic Palestine,³³ the *hudna* would be viewed as a cease-fire or cessation of violence for a period of time. In contrast, the Palestinian and Israeli peace accords conceded to Israel the 78 percent of historic Palestine upon which the state of Israel exists today and effectively renounced Palestinian claims to it.
4. The *hudna* would be conditioned upon the Palestinians' continued ability to prepare for a future stage of the conflict.³⁴

Responding to those who took talk of a "phased solution" as proof that Hamas had abandoned its view that the entirety of historic Palestine is *waqf* land, Dr. Abdel Aziz Ar-Rantisi, a Hamas leader later assassinated by Israel, stated, "Hamas has come to a conclusion that it is difficult to liberate all of Palestinian land at this juncture. Thus, it will accept liberation in stages... Hamas proposes a ten-year *hudna* in return for an Israeli withdrawal and establishment of a Palestinian state to include the West Bank, Jerusalem, and the Gaza Strip... Whatever new proposal [is made] along these lines does not mean that Hamas recognizes Israel or the end of the Israeli-Palestinian conflict."³⁵ Elsewhere, Ar-Rantisi reiterated, "It is forbidden in Islam to concede any part of our land; thus we will never recognize Israel."³⁶

As noted, one of the basic conditions rendering a *hudna* enforceable is that the signatory to it must be the Imam or his deputy. Since the end of the Ottoman Caliphate in the early 1920s, there has not been a recognized and legitimate leader or Imam agreed upon by all Sunni Muslims. In practical terms, modern Islamic jurisprudence has not addressed the question. The result has been that each group has given itself the right to represent its constituents. That is exactly what Hamas has done in this context.

We believe that, when viewed from an Islamic perspective, these seemingly arcane formulations are meant to and do provide a basis under which Hamas may be able to coexist with Israel for a period of time. They are not themselves the basis of a peace treaty, at least for the time being. However, as described later in this report, they may allow Hamas to either conclude a long-term truce or to acquiesce in a treaty negotiated and signed by other Palestinians (for example, Fatah) and ratified by the Palestinian nation. It must be emphasized that such a treaty would have to be "fair" as Hamas

understands it. Specifically, the terms would have to include a Palestinian state in the West Bank, Gaza, and East Jerusalem, as well as the Palestinian “right of return.”³⁷ Hamas certainly knows that Israel would never, under any circumstances, allow a “right of return” to the 1949–67 boundaries. This leaves open the strong implication that Hamas understands and accepts that any “return” would be to a Palestinian state next to Israel. Otherwise, the whole process would be pointless and futile.

After the Elections

In late 2004, Hamas decided that the time had come for it to enter electoral politics. Since then, Hamas’s discourse has been increasingly disposed toward political realism. This has been expressed in the following ways:

- In 2004, Hamas decided to participate in the Palestinian municipal elections, which were held in four stages in 2005. Hamas’s candidates met with considerable electoral success, despite strong opposition by Fatah.
- Also in 2004, the movement declared its commitment to a unilateral truce with Israel. At the request of newly elected Palestinian president Mahmoud Abbas, this culminated in a formal unilateral truce officially declared by Hamas and other Palestinian factions in January 2005.
- Hamas’s stance with respect to joining the PLO, a move Hamas had always rejected without a PLO rescission of its recognition of Israel and its ongoing involvement in the peace process, underwent a major change. On March 17, 2005, Hamas was one of a dozen Palestinian factions that signed the final announcement of the intra-Palestinian dialogue in Cairo, sponsored by Egypt and attended by Abbas. The announcement included several other provisions, the most important of which were the requirements that all factions must accept a Palestinian state with Jerusalem as its capital and that the PLO must bring all forces and factions into the organization to fulfill its mandate as the only legitimate representative of the Palestinian people.
- Hamas surprised both its friends and enemies by declaring its intention to participate in the Palestinian legislative elections, originally scheduled for July 2005 and postponed to January 2006. It had refused to participate in the legislative elections held in 1996 because they were being held under the provisions of the Oslo Accords. Hamas justified its decision to participate by claiming that the Oslo Accords had for all intents and purposes terminated with the eruption of the Al-Aqsa Intifada in September 2000 and that Israel had recognized this termination by violating its provisions.³⁸ The reasoning was much less important than the decision itself, since it was clear that the participation of Hamas in the election was an implicit acceptance of one of the most important outcomes of the Palestinian-Israeli peace process, which Hamas had theretofore consistently condemned.

Hamas’s decision to participate in the legislative elections signaled a significant shift in its approach to the political status quo. Its participation in the municipal elections had not raised many questions about the movement’s fundamental stance, because municipalities are occupied primarily with mundane matters of daily life. However, participation in the legislative elections would necessarily require Hamas to deal with Israel and the international community and engage in political compromises. The Islamic formulations spelled out earlier in this report were essential in allowing these compromises to be made.

Hamas also realized that its decision to participate in the legislative elections required a new political idiom and terminology. This was reflected in its election manifesto, which, in significant contrast to the charter, used comparatively pragmatic language and eschewed calls for Israel’s destruction. Nevertheless, Hamas clearly

remained faithful to the principles of the movement by referring to “the full liberation of Palestine” and by repeating that “this right may not be voided by any temporal limitations.”³⁹ However, to win over voters who were not affiliated with the movement and did not necessarily share its ideology, Hamas limited its ideological language and emphasized the economic, educational, housing, health, and other programs that it was advocating. Probably just as important for Hamas was the overwhelming perception among Palestinians, even among Hamas’s enemies, that it was “clean” in comparison to Fatah and its seemingly endemic corruption.

This flexibility in Hamas’s discourse, predictably labeled “opportunism” by its more radical Islamist critics, escalated after the elections. As part of its (ultimately unsuccessful) effort to form a national unity government, it issued a political program on March 12, 2006, that was meant to appeal to both the national and the Islamic factions in Palestine and that emphasized calls for a cease-fire and a “phased solution.” The program’s most significant element was Hamas’s acknowledgment that the “issue of recognizing [Israel] does not concern a single Palestinian faction alone, nor any government alone, but it is the decision of the Palestinian people, wherever found.”⁴⁰ Hamas also used the program to signal its willingness to alter its previous position regarding the agreements already signed between the PLO and Israel: “our position on previous agreements is linked to the interests of the Palestinian people and we retain the right to reconsider them in accordance with these interests.”⁴¹ For those familiar with Hamas’s positions and rhetoric, the meaning was clear: it had begun to pursue a policy of “national legitimacy”—that is, Hamas was signaling that it would be willing to acquiesce to decisions that it would not itself make if made by the Palestinian presidency, which is controlled by Fatah, and ratified by the Palestinian population.

The program as a whole indicated that Hamas did not reject negotiations as a means but rather rejected them in their current form because Hamas did not perceive them to meet the minimum demands of the Palestinian people. In effect, Hamas was saying that it might reconsider its position should the framework of the negotiations change.⁴² Such statements represented further examples of significant change in Hamas’s position with regard to Israel when compared to its stance of a few years earlier.

After failing to convince Fatah and the other national Palestinian factions to join a national unity government, Hamas formed a government on its own in late March 2006 and issued a new program. It was strikingly free of the language of ideological rhetoric, not referring a single time, for example, to “historic Palestine.” The program focused on the more pragmatic issues of working to establish an independent Palestinian state with full sovereignty and with Jerusalem as its capital, ending the occupation, removing settlements, pushing for a comprehensive Israeli withdrawal from the territories occupied in 1967, and eliminating the Israeli-built separation barrier. Moreover, it explicitly stated, for the first time that we know of, that a Hamas government was ready to deal “with the [previously] signed [Israeli-Palestinian] agreements with a high sense of responsibility so as to protect the vital interests of our people and safeguard their rights without compromising their established fundamental entitlements . . . and the government’s handling of the relevant international resolutions with national responsibility, including the protection of our people’s established rights.”⁴³

Presumably because the West and Israel were focused on seeking specific commitments from Hamas (which they did not expect Hamas to make) and not on pursuing incremental changes from Hamas, they immediately put into effect economic and political sanctions against the government and all elements of the Palestinian Authority under Hamas’s control, retaining contact with those elements directly under President Abbas. The “Quartet” (consisting of the United States, Russia, the European Union, and the United Nations), which had a role in overseeing Palestinian-Israeli negotiations, enunciated three conditions that had to be accepted by Hamas in order for sanctions to be lifted and for it to be accepted as a player in the Palestinian-Israeli political process. Hamas had to (1) recognize the right of Israel to exist; (2) repudiate violence

and “terrorism” (which Hamas considers legitimate resistance); and (3) recognize previously signed agreements between the PLO and Israel—agreements that Hamas had consistently rejected.

These conditions and the accompanying statements from the Quartet and Israel ignored the changes Hamas had made in its positions since the election campaign had begun. Western commentators had already pointed them out, so they were certainly not ignorant of them. This represents a common dynamic in Western responses to Muslim and Arab approaches—that is, demanding clear, explicit, and unambiguous language. Such language is the norm in the West but not in the Middle East, where indirection and nuance are often used to indicate change, largely in order to spare the party making the change from public humiliation.⁴⁴ The West tends to consider this as *prima facie* bad faith and, as in this instance, either ignores the nuance or denounces it as fraudulent.

Thus, evidence that Hamas had *implicitly* responded positively to some of these demands was by no means sufficient for the West and Israel to recognize or acknowledge any progress. Presumably they understood that Hamas could never accede to their demands directly and publicly; that would be understood by Hamas’s friends and enemies alike as surrender of its ideological identity and virtually an end to its *raison d’être*. Thus, although Hamas had, in its own frame of reference, moved its position significantly closer to what the Quartet demanded, this was not understood, accepted, or valued because, in Western terms, it clearly did not represent an unambiguous acceptance of the Quartet’s demands. Another way of interpreting it would be that while the West sought to humiliate Hamas by demanding a straightforward repudiation of Hamas’s positions, Hamas sought to avoid such humiliation at all costs.

To explain its position, Hamas launched a public relations campaign, disseminating op-ed articles written by its leaders that it succeeded in having published in major American and British newspapers. In them, Hamas’s leaders tried to explain their positions using diplomatic and pragmatic language addressed to a Western audience. They portrayed Hamas as a national liberation movement endeavoring to get rid of a foreign occupation and emphasized their desire to achieve a Palestinian state in the West Bank and Gaza Strip, with East Jerusalem as its capital—the same desire expressed by leaders of Fatah and the Palestinian Authority. They also underscored that they were not hostile to Jews but that they were against Israelis as occupiers and that they did *not* want to throw the Jews into the sea. They also expressed their desire to enter a dialogue with the West based on justice and mutual respect but remained determined not to recognize Israel.

One of Hamas’s most important public relations efforts was an interview with Hamas leader Ismail Haniyeh, then Palestinian prime minister, that was published in the *Washington Post*. He stated that until Israel first recognized the rights of the Palestinian people, Hamas could not be expected to recognize Israel, thus shifting the argument and making Israeli nonrecognition of Palestinian rights the focus of the debate. He also asked, “Which Israel should we recognize? Where are the borders of the Israeli state that should be recognized?”⁴⁵ By doing so, he emphasized Hamas’s belief that Israel was not prepared to ever accept a Palestine that included the whole of the West Bank, the Gaza Strip, and East Jerusalem.

Western Perceptions

Predictably, Hamas’s public relations offensive had no discernible effect on the attitudes of Western governments, and the boycott of the portions of the Palestinian Authority run by Hamas immediately went into effect. According to all indications, they viewed these statements and actions as purely cosmetic and propagandistic, bent on gulling a gullible West into letting down its guard. It was believed that Hamas planned to take over the Palestinian Authority, implement its “real” program of Islamization,

and thus be in a much better position to attempt to destroy Israel. Western leaders pointed (correctly) to the facts that Hamas never explicitly disavowed its aim to destroy Israel, would not contemplate recognizing it, and was, at the least, ambivalent about accepting previous agreements. It is not clear whether the West's boycott was based on a hope that "steadfastness" by the West would cause Hamas to further moderate its positions or on the full knowledge that it was highly unlikely to do so. In any case, this rejection, they reasoned, would convince "ordinary" Palestinians to return to the moderation of Fatah and to view Hamas's Islamism as a dead end.

Because the West invariably looks for the bottom line and thus formulates its demands in no-nonsense language, it was not prepared to deal with Hamas or its brand of Islamism on its own terms. Hamas's need to formulate positions based on its understanding of shari'a was either incomprehensible in the West or simply seen as hypocritical double-talk.⁴⁶ Our point is not that Islamists in general and Hamas in particular are, under the skin, really Jeffersonian democrats. On the contrary, we maintain that without some knowledge of Islamic reasoning and discourse, actions and statements by Hamas and other Islamist organizations will remain opaque and meaningless, and the West will remain oblivious to significant developments on the part of its adversaries. Of course, we are not arguing that everything Hamas or one of its officials says should be taken at face value. Rather, we are pointing out that Hamas, *within its own frame of reference*, is signaling real shifts that are understood in the Arab and Islamic world. If Israel and the West wish to attempt to coexist peacefully with Hamas, which is itself not at all a given, they must develop the capability to understand its language.

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Hamas's Changing Approaches

In May 2006, a number of leaders from Hamas, Fatah, Islamic Jihad, the PFLP, and the Democratic Front for the Liberation of Palestine (DFLP), who were serving time in Israeli prisons, issued what is commonly referred to as the "Prisoners' Document."⁴⁷ Despite Hamas's early reservations regarding some items in it, it ultimately approved the document after some changes were made to it.

A particularly significant aspect of the document was its identification of the urgent need for a Palestinian plan providing for comprehensive political action and the unification of Palestinian political discourse on the basis of Palestinian national goals, "Arab legitimacy," and "fair" international legitimacy resolutions (inherently ambiguous terms that were understood by its Arab audience). The addition of the word "fair" (*munsifa*) provided the movement the option of avoiding any unacceptable ideological concessions.

The most important aspect of this process was Hamas's consent to the provision in article 7, which stipulated,

The management of negotiations is the prerogative of the Palestine Liberation Organization and the President of the Palestinian National Authority on the basis of upholding the Palestinian national objectives as contained in this document. Any negotiated agreement shall be submitted to the new Palestinian National Council (PNC) for approval and ratification or a general referendum shall be held at home and in exile, organized by law.

With this provision, Hamas signaled that it would accept any agreement reached with Israel by President Abbas if it was approved by the new Palestinian National Council or through a referendum of the Palestinian people in the occupied territories and in the Palestinian diaspora. Hamas stressed this point again in its response paper presented to former U.S. president Jimmy Carter in April 2008, stating that it "will accept the decision of the Palestinian people through a referendum under international monitoring if President Mahmoud Abbas manages to reach an agreement with Israel through the final status negotiations."⁴⁸ It further emphasized the right of the Palestinian people

“to establish a Palestinian state with full sovereignty within the borders [of the West Bank, East Jerusalem, and Gaza Strip of June 4, 1967].”⁴⁹

We can see significant movement in Hamas’s political thinking here. Based on these statements, it seemed to implicitly accept Israel’s existence and to be seeking some form of coexistence with it. It appears that Hamas was seeking to balance between the poles of implicitly accepting and coexisting with Israel, on the one hand, and its refusal, as an Islamic movement, to officially and openly adopt an approach that, on the basis of its ideology, cannot be justified under Islam. Hamas was inviting Fatah, from within the Palestinian Authority, to do what it felt it could not itself do.⁵⁰

Throughout the period of its sole governance (March 2006–March 2007), Hamas continued with this approach. As a *movement*, Hamas maintained its solid ideological positions, but as a *government* within the “legitimate” Palestinian political regime, it espoused a flexible and pragmatic political line. Simultaneously, it maintained its willingness, even eagerness, to set up a unity government. We understand this as another expression of its desire to find a political path that would allow it to coexist with Israel without jettisoning its ideological moorings. A coalition with Fatah would allow Hamas to have the prerequisites of governing while letting Fatah do what it proclaimed that it wanted to do—that is, make peace with Israel. Evidence for this interpretation can be found in the Hamas-led national unity government’s program, based on which Hamas succeeded in gaining the participation of Fatah and other Palestinian factions in its government.

In that program, submitted in March 2007, the government reconfirmed its “respect” for but not its commitment to “the resolutions of international legitimacy and agreements signed by the Palestine Liberation Organization.” It also reaffirmed again what is stated in the Prisoners’ Document—that the management of negotiations is the prerogative of the PLO and of the president of the Palestinian National Authority on the basis of upholding and realizing the Palestinian national objectives.⁵¹

Hamas sought, within the strict limits of its ideology, to formulate a new political equation by means of which it would advance politically through the “legitimate” Palestinian political regime by becoming part of it after the Palestinian legislative elections. It simultaneously sought to maintain its ideological identity to the greatest extent possible, an imperative for an organization based so firmly on an ideological stance and anchored in the traditions and culture of the Muslim Brotherhood.

Hamas and the Possibility of Recognizing Israel

Hamas’s incessant declarations that it will never recognize Israel are based on the overwhelming preponderance of Islamic jurisprudence on the subject. Recognition would be a matter of grave theological and political import that affects the whole Islamic world, given the significance that Palestine has assumed in Islamic discourse for more than half a century. Thus, recognition would require authoritative jurisprudential patronage of the highest degree. It is indisputable that this backing is not presently available, although there have been attempts made to provide religious cover for recognition. However, these endeavors have not found support among the overwhelming majority of contemporary Muslim scholars. On the contrary, they have attracted harsh criticism by scholars who have deconstructed the rationale of arguments for recognition.⁵²

Perhaps the most important example of an attempt to justify recognition is found in a published *fatwa* by the Moroccan scholar Ahmed Ar-Raisouni, who made a partial argument that a treaty with Israel might be possible.⁵³ No other major scholar has accepted even this limited opening. Hamas likewise has not adopted Ar-Raisouni’s *fatwa* and is still openly committed to its position of nonrecognition. However, it accepts *implicit* recognition—that is, by agreeing to respect binding international decisions and the agreements signed by the PLO and Israel, both past and future. Thus, it uses

the political legitimacy of the interests of the whole Palestinian people to sidestep the theological prohibition by which it, as an Islamic organization, is bound.

Can Hamas Be Engaged?

This brings us back to the main question: Is it possible to deal with Hamas? We believe that the answer to this question is yes. It is clear from the material presented that Hamas adopts most of the opinions of mainstream Islamic jurisprudence. In return for a state and the other conditions mentioned, Hamas is prepared to enter into a decades-long *hudna* with Israel.

We have portrayed Hamas's "phased" strategy as a development along the road to eventual coexistence because we believe that it, along with the other elements we have elucidated, provides a space for coexistence to develop. We do not believe that Hamas is being disingenuous in announcing this strategy. Rather, we believe that engagement is positive and that the consequences of it cannot be predicted. Our concurrent argument is that there is no positive potential for long-term, seemingly permanent international isolation of Hamas, because we do not believe that Hamas can be effectively neutralized.

As we have shown, Hamas implicitly responded—carefully and deliberately—to the international Quartet's conditions and expressed its willingness to recognize Israel from within "Palestinian legitimacy." Using that formulation, it agreed to respect binding international decisions and the agreements signed by the PLO and Israel. Furthermore, as a practical matter, it halted the use of violence first when it entered a unilateral cease-fire at the end of 2004, and later when it entered into a mutual cease-fire (*tahadiya*) with Israel in June 2008 that it and Israel largely enforced.

It should be noted here, however, that Hamas does not accept that a *tahadiya* is equivalent to a *hudna*, because it conditions agreement on a *hudna* on the establishment of an independent Palestinian state in the West Bank and Gaza Strip with East Jerusalem as its capital, the right of return for Palestinian refugees, the dismantlement of settlements, the removal of settlers from the West Bank, and the release of all Palestinian prisoners in Israeli jails—that is, on acceptance of what it considers to be the minimum demands and rights of the Palestinian people. If we compare these conditions with the conditions of the July 2008 cease-fire, we find a wide gap between them. Thus, a *tahadiya* such as the one concluded in 2008 cannot mean an end to this phase of the conflict, according to Hamas's interpretation of shari'a.

These developments—in and of themselves—show a significant progression from the ideology embodied in Hamas's 1988 charter. If we want to see a formal modification of Hamas's convictions and ideological rhetoric (as opposed to its political statements, which we have cited), we must accept that this is a process that requires great time and effort. Hamas does not feel that it could do this without explicit and appropriate Islamic support. If Hamas is to justify a huge step such as this to its Palestinian and worldwide constituencies, it requires inducements. The recognition of the right of Israel to exist in Palestine is a dangerous one in Islamic jurisprudence, because Palestine is not only considered sacrosanct from an Islamic perspective but it is also seen as occupied Muslim land. The issue is much bigger than Hamas. This is why it is unrealistic to expect any pressure, including credible threats of destruction by Israel, to lead to recognition of Israel by Hamas, certainly in the short term.

Indeed, we do not believe that increased pressure is likely to make Hamas more conciliatory. We have tried to understand the changes Hamas has made in its political stance in its own terms. We believe that the record of the last two decades demonstrates that it has gone a significant distance without destroying its own identity. As shown, Hamas is embedded in the culture and jurisprudence of the Muslim Brotherhood. That culture must be understood as exerting a profound effect on Hamas's actions. To expect it to pull free and contravene the ideology is pointless. Hamas will not do so.

However, we have tried to show that ideology, as understood by Hamas, is fundamentally different from politics in a way that often makes no sense in Western terms.

Conclusions: The View from 2009 and beyond

At the conclusion of the *tahadiya* in mid-December 2008, Israel could have faced squarely the two choices it had. It could have tried to completely eradicate Hamas. Despite the urging of Benjamin Netanyahu and other rightist politicians, it did not attempt to do so. Alternatively, it could have accepted what most military and political analysts had been saying for several years—that Hamas could not be destroyed militarily.

Had it made the choice to seek a means to deal with Hamas, Israel would then have had to decide how to live with a Hamas-controlled Gaza Strip for the foreseeable future. Even taking Hamas's unwillingness to enter into normal diplomatic relations as a given, it could have tried to create an environment in which Gaza's economy could have been allowed to function. It could have allowed food, fuel, and medicine to enter and eased entrance and egress while maintaining its inspection regime, or tried to develop another one in cooperation with Fatah and/or the European Union to prevent smuggling of weapons through the crossings. We believe there is little doubt that Hamas would readily have agreed to a renewed *tahadiya* under such circumstances, though, of course, it would have vehemently (and vainly) protested against any restrictions on its freedom of action. As the six-month *tahadiya* proved, Hamas is capable of obtaining substantial compliance from the other factions active in Gaza.

Instead, Israel opted for a middle course. It attacked Gaza heavily but stopped well short of reoccupation. It killed an estimated 1,300 people, of which an estimated two-thirds were Hamas members or militants,⁵⁴ and it clearly destroyed large caches of arms and munitions and probably most of the tunnels under the Philadelphia line, although the tunnels resumed operation shortly after the cease-fire. But it avoided the essential political problem—that is, how can Hamas and Israel live together in the near term, since neither can seem to eradicate the other, even if both are bent on each other's destruction in the long term?

As should have been clear to Israel, or to anyone who was familiar with Hamas's thinking, death and destruction would not, under virtually any circumstances, persuade Hamas's leadership or its rank and file to acquiesce to permanent Israeli control or to shift their allegiance to Fatah. Were Hamas fatally wounded, its members would be more likely to turn to more radical groups that have criticized Hamas for being too accommodationist, such as al Qaeda or Palestinian Islamic Jihad. In fact, the results following the end of hostilities were predictable: Hamas was politically strengthened, Fatah was further weakened, and Israel was further isolated.

This paper has attempted to convey an understanding of the dynamics of Hamas's political and ideological thinking. It has shown that, *in Hamas's own terms*, it has indicated a grudging willingness to coexist with Israel in the limited framework of a *hudna* or *tahadiya*. This could probably be accomplished in the longer term only within the framework of a coalition agreement between Hamas and Fatah, by means of which Fatah would negotiate an agreement that Hamas would not oppose, so long as the agreement provided for Palestinian control of the West Bank, the Gaza Strip, and East Jerusalem. The political framework for such an agreement has been spelled out elsewhere.⁵⁵

We fully recognize that there is no assurance that such an attempt to create such a coalition government will work. However, it is not hyperbolic to say that, on the one hand, there is no alternative and that, on the other hand, it fits the political reality. There is no alternative because Hamas, Israel, and Fatah all seem destined to be formidable forces in the Palestinian-Israeli reality for the foreseeable

A grudging willingness to coexist with Israel in the limited framework of a hudna or tahadiya could probably be accomplished in the longer term only within the framework of a coalition agreement between Hamas and Fatah.

future, and periodic wars, such as was fought in Gaza in December 2008–January 2009, appears to us as a less desirable alternative than coexistence, if it is indeed possible.

Whether Hamas will continue its apparent willingness to explore the possibility of coexisting with Israel is an open question. Israelis are understandably bewildered as to why they should attempt to live with a political organization whose *raison d'être* is the destruction of their state. The answer is embedded in the frustration of the Palestinians and their desire for their own state for more than 60 years. While the authors of this paper would certainly not be in accord themselves as to the reasons for this frustration—that is, as to whose “fault” it is that the Palestinians have no state—the fact of their frustration, and the growth of belief on both sides of the Israeli-Palestinian conflict that the “other” cannot be trusted, are plain for all to see. Given the Islamic context in which this frustration is expressed, and Hamas’s status as a major force, we believe Islamic law is necessarily part of the solution.⁵⁶

There are mechanisms that Israel and Western countries can use to test whether Hamas’s behavior conforms to the political path we have discerned. However, an essential preliminary step would be for the United States and Israel to come to the explicit, though not necessarily public, conclusion that they cannot destroy Hamas in the foreseeable future. Perhaps Israel’s former Kadima-led government implicitly reached that conclusion when it ended its Gaza offensive without destroying Hamas. Israel’s current government, led by Prime Minister Netanyahu, has not yet enunciated a concrete policy as of this writing, though the prime minister and many of the government’s other leaders have previously called for Hamas’s eradication.

If Hamas is part of the equation, then a cease-fire must be conditioned on allowing the flow of nonmilitary goods into Gaza under conditions similar to the inspection regime set up in November 2005. But the real test for Hamas can only come when the United States and Israel no longer oppose a unity government between Fatah and Hamas. Our prediction is that Hamas would allow a Fatah negotiating team to reach an agreement with Israel on a Palestinian state in the West Bank, the Gaza Strip, and East Jerusalem and not oppose it, provided there is ratification by a referendum. Whether Israel would agree to such a settlement is, of course, another question.

While this paper does not explicitly make policy recommendations, we believe that a recognition of the perspectives we present should result in moves by Israel, the United States, and other Western countries that would test these premises in terms meaningful to Hamas and consonant with Israel’s security. That is the sole means of finding out whether Hamas could indeed move toward coexistence.

We realize that some will read this paper as being “pro-Hamas,” or conclude that we naïvely believe that Hamas has given up armed violence. We do not. Rather, we have tried to supply something that is rare in the voluminous literature on Hamas and other Islamist organizations, namely, a view of how the organization regards itself in its own terms—that is, from a Muslim perspective. We do believe that Hamas takes Islam seriously. Without looking at Hamas through an Islamic lens, no serious understanding of its motivations or actions, or accurate assessment of its future behavior is possible.

Postscript

The *New York Times* recently published an interview with Khalid Meshal in Damascus,⁵⁷ in which he was somewhat more explicit about what Hamas is offering Israel than he has been in the past: “We are with a state on the 1967 borders, based

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on a long-term truce.” Defining “long term” as ten years, he also emphasized that “we will be part of the solution, period.” As the *New York Times* put it, he “urged outsiders to ignore the Hamas charter.”

We mention this interview only as the most recent example of Hamas’s consistent statements belying the message of destruction still contained in the charter. We know that those who believe that ideology trumps all will not be convinced by our analysis of the possibility of change—or by any statements by Hamas leaders. However, those who are interested in perceiving and exploiting political change will, we hope, draw conclusions similar to ours.

Notes

1. Hamas won only 44 percent of the popular vote. The disparity between the popular vote and its legislative win was due to Fatah allowing multiple candidates to run in many constituencies, thus diluting the votes of its supporters.
2. The general Western view is that Hamas carried out a coup against the coalition government. Hamas, however, claimed that it was foiling a Fatah attack on it, a view also supported by at least one Western reporter. See David Rose, “The Gaza Bombshell,” *Vanity Fair* (April 2008), www.vanityfair.com/politics/features/2008/04/gaza200804 (accessed April 19, 2009).
3. *Documents of the Islamic Resistance Movement: The First Year of Intifada* (n.p.: Hamas’s Media Office, n.d.).
4. There is a more extensive discussion in the forthcoming dissertation by one of the present authors. See Osama Abu-Irshaid, “The Dialectic of Religion and Politics in Hamas’s Thought and Practice” (dissertation, University of Loughborough, U.K., forthcoming).
5. An English translation of Hamas’s charter is available at avalon.law.yale.edu/20th_century/hamas.asp (accessed April 19, 2009).
6. For a detailed analysis, see Menachem Klein, “Hamas in Power,” *Middle East Journal* 61, no. 3 (Summer 2007): 442–59.
7. For more details about the intellectual framework of the Muslim Brotherhood, see Imam Hasan Al-Banna, *Majmoo’at Rasa’il Al Imam Alshaheed Hassan Al Banna* [The Letter of Our Message in the Collection of the Letters of Imam Hasan Al-Banna] (Beirut: Islamic Foundation for Publications, Media and Distribution, n.d.), 16.
8. The call for prayer is used here as a metaphor for restoring Palestine to Islam. Historically, when Muslims would first introduce Islam into a land, the call for prayer meant that it was thenceforth under the control of Islam.
9. *Hadith* are reported sayings of the Prophet Mohammad of varying weight in Islamic tradition and jurisprudence. While important, they are not given the weight of words from the Qu’ran itself.
10. See avalon.law.yale.edu/20th_century/hamas.asp.
11. Another narration of the *hadith* emphasizes that it is the Jews who will initiate hostilities with the Muslims: “The Jews will fight you and you will dominate them until the stones say: O Muslim, this is a Jew behind me, kill him.” This tension is discussed in Abu-Irshaid, “The Dialectic of Religion and Politics in Hamas’s Thought.”
12. For example, a recent article by Khalid Meshal, chairman of Hamas’s political bureau, states: “Our message to the Israelis is this: We do not fight you because you belong to a certain faith or culture. Jews have lived in the Muslim world for 13 centuries in peace and harmony; they are in our religion ‘the people of the book’ who have a covenant from God and his messenger, Muhammad (peace be upon him), to be respected and protected. Our conflict with you is not religious but political. We have no problem with Jews who have not attacked us—our problem is with those who came to our land, imposed themselves on us by force, destroyed our society and banished our people.” See Khalid Meshal, *Los Angeles Times*, February 1, 2006, articles.latimes.com/2006/feb/01/opinion/oe-meshal1 (accessed April 19, 2009).
13. “Interview with Sheikh Ahmed Yassin,” *Alnahar* (Jerusalem), April 4, 1989.
14. “Interview with Khalid Meshal,” *Al Hayat* (London), December 9, 2003.
15. The process of amending the charter would likely raise uncomfortable questions regarding Hamas’s adherence to its Islamic principles and call into question its credentials as a resistance organization. Moreover, Hamas probably assesses that any change it could make would be insufficient for Israel, the United States, and the West.
16. In this context, it is important to note that those Muslim countries that have recognized Israel, notably Egypt and Jordan, and those that have formally accepted the Arab Peace Initiative, including Saudi Arabia, have never provided a theological justification for their positions with regard to Israel.

17. This is neatly illustrated in a pair of articles in *Ha'aretz* that reported on an interview by Reuters with Hamas leader Khalid Meshal in Damascus. In the first article, Meshal was quoted as stating that Hamas agreed with the general Arab position (that is, presumably the Arab Peace Initiative) that the Palestinian state would be created in the 1967 boundaries of the West Bank, the Gaza Strip, and East Jerusalem and that next to it "in reality there will be an entity or a state called Israel on the rest of Palestinian land." See *Ha'aretz*, January 10, 2007, www.haaretz.com/hasen/spages/812079.html (accessed April 19, 2008). According to a follow-up *Ha'aretz* article the next day, an hour after the interview appeared, Hamas government spokesman Ghazi Hamad told *Ha'aretz* that Meshal said, "Israel exists—and that's a fact," but maintained that "[t]here was no change in our stance that Hamas does not recognize Israel." See Avi Issacharoff, "Hamas Denies Meshal Said Group Would Consider Recognizing Israel," *Ha'aretz*, January 11, 2007, www.haaretz.com/hasen/spages/811997.html (accessed April 19, 2009).
18. This is true except for a very small number of special cases, such as Turkey and Iran.
19. See Khaled Hroub, *Hamas: A Fikr Wal Mumarasa Alsiyasiya* [Hamas: Political Thought and Practice], 1st ed. (Beirut: Institute for Palestine Studies, 1996.), 57–59.
20. As discussed in the conclusion, we believe that this strategy has the potential to lead to coexistence, even though on its face it appears to merely postpone the inevitable confrontation.
21. Hroub, *Hamas: A Fikr Wal Mumarasa Alsiyasiya*, 81.
22. "Interview with Mohammad Nazal," *Qadaia Dawulia* (Islamabad), November 22, 1993.
23. Wendy Kristianasen, "Challenge and Counterchallenge: Hamas's Response to Oslo," *Journal of Palestine Studies* 28, no. 3 (Spring 1999): 23.
24. Hroub, *Hamas: A Fikr Wal Mumarasa Alsiyasiya*, 94.
25. Abu Marzuq's initiative was announced in an interview with the weekly Jordanian newspaper *Assabeel*, April 19, 1994.
26. "Press conference in Gaza by Mahmoud Al-Zahar," Reuters, January 23, 2006, www.islamonline.net/Arabic/news/2006-01/24/article01.shtml (accessed April 19, 2009).
27. Sheehab Aldeen Ibn Hajar Alhaithamy, *Tuhfat al Muhtaj Bisharhi Alminhaj*, vol. 4, 2nd ed. (Beirut, Lebanon: Dar Alkotub Alelmiya, 2005), 230.
28. Khaleel Bin Ishaq Almaliki, *Hasheiat Alkharshi Ala Mukhtasar Sedi Khaleel*, vol. 4, 1st ed. (Beirut, Lebanon: Dar Alkotub Alelmiya, 1997), 90–91.
29. Sheehab Aldeen Ibn Hajar Alhaithamy, *Tuhfat al Muhtaj Bisharhi Alminhaj*, 231.
30. Mohammad Bin Ahmad Ad-Dusuki Almaliki, *Hashiyat Ad-Dusuki Ala Sharh Al Kabeer*, vol. 2, 1st ed. (Beirut, Lebanon: Dar Alkotub Alelmiya, 1996), 528.
31. Ibn Qudamah Al Maqdis, *Almoghni*, 14th ed. (Riyadh, Saudi Arabia: Dar Aalam Alkotub for Printing and Distribution, 1999). 154.
32. See www.passia.org/meetings/2004/Hassan-Yousef-Dec2004.htm (accessed April 19, 2009).
33. In fact, in an agreement inspired by Islam, both Palestinians and Israelis would be allowed to maintain their respective narratives that all of historic Palestine belongs to the Palestinians and all of Eretz Israel belongs to the Jewish people.
34. For more information about the scholarly discussion, see www.factjo.com/newsletterFullNews.aspx?id=58&INo=60 (accessed April 19, 2009).
35. Reuters, January 25, 2004, www.islamonline.net/Arabic/news/2004-01/26/article01.shtml (accessed April 19, 2009).
36. Nabeel Al Fouli, "Thawabut fi Fiqh Altahred inde Harakat Hamas" [Governing Factors in Hamas's Vision for Liberation], www.aljazeera.net/NR/exeres/873BF3D3-FF44-4565-9E98-E1CFE1132FB7.htm (accessed April 19, 2009).
37. In the previously mentioned interview by Reuters with Hamas leader Khalid Meshal, he said: "We are demanding a Palestinian state on the 1967 border including Jerusalem and the right of return." See *Ha'aretz*, January 10, 2007, www.haaretz.com/hasen/spages/812079.html (accessed April 19, 2009).
38. Khalid Meshal Meshal, *Al Hayat* (London), January 29, 2006, www.alhayat.com/arab_news/levant_news/01-2006/Item-20060128-12cc54c7-c0a8-10ed-0013-5f0aef80d8e0/story.html (accessed April 19, 2009).
39. See www.palestine-info/arabic/palestoday/reports/report2006_1/entkhabat06/entkhabat_tashre3i_06/program/5_1_06.htm (accessed April 19, 2009).
40. See www.aljazeera.net/news/archive/archive?ArchiveId=317624 (accessed April 19, 2009).
41. *Ibid.*
42. "Press conference in Gaza by Mahmoud Al-Zahar," Reuters, January 23, 2006.
43. See www.ikhwanonline.com/Article.asp?ArtID=18832&SecID=109 (accessed April 19, 2009).
44. For a discussion of these and other cultural issues with regard to Arab-Western negotiations, see Joseph Ginat, Edward J. Perkins, and Edwin G. Corr, eds., *The Middle East Peace Process: Vision vs. Reality* (Norman, OK: University of Oklahoma Press, 2002), esp. 1–20.

45. Lally Weymouth, "A Conversation with Ismail Haniyeh: 'We Do Not Wish to Throw Them Into the Sea'" *Washington Post*, March 16, 2006, www.washingtonpost.com/wp-dyn/content/article/2006/02/24/AR2006022402317.html (accessed April 19, 2009).
46. There are significant parallels between Islamic jurisprudence and the processes of traditional Jewish law (*halacha*). While it might produce greater understanding if rabbis and Muslim scholars compared notes, in the current climate few on either side like to acknowledge similarities with the hated "other."
47. For an English translation of the document, which is formally titled "The Palestinian National Conciliation Document," see www.jmcc.org/documents/prisoners.htm; for the original Arabic, see www.alzaytouna.net/arabic/?c=129&a=31928 (both accessed April 19, 2009).
48. See www.alzaytouna.net/arabic/?c=129&a=63618 (accessed April 19, 2009).
49. *Ibid.*
50. Those familiar with *halacha* will easily recognize in this the mechanism of the *shabbes goy*, that is, an individual who assists Jews by performing acts forbidden by *halacha*.
51. See www.islamonline.net/servlet/Satellite?c=ArticleA_C&cid=1173694965882&pagename=Zone-Arabic-News/NWALayout (accessed April 19, 2009).
52. Tayseer Al-Tamimi, the Palestinian grand mufti in Jerusalem, issued a *fatwa* in December 2007 legitimizing the recognition of Israel out of necessity. This *fatwa* was rejected by an overwhelming majority of Muslim scholars. Al-Tamimi is not a Hamas associate; rather, he is closer to Palestinian president Abbas. For the original *fatwa* and the responses to it, see wasatiaonline.net/news/details.php?data_id=235 and www.safsaf.org/12art2007/qadiqudaatTamimi.htm (both accessed April 19, 2009).
53. Ar-Raisouni concluded, however, that any treaty would be necessarily consummated under duress and thus would not carry any religious or legal weight. See Ahmad Ar-Raisouni, "Qadiat Filsteen Alyawm: Roaia Fiqhia Siyasia" [The Palestinian Question Today: A Jurisprudential and Political Approach], www.aljazeera.net/NR/exeres/3E4D7B06-8C5B-427C-850B-072FFE432044.htm (accessed April 19, 2009).
54. Hamas claims it lost only 48 fighters, and Palestinian Islamic Jihad claims 39 of its militants were killed. Israel claimed that a total of 900–1,000 Palestinians were killed, of which half were militants.
55. See, for example, Paul Scham, "Coping with Hamas" (unpublished paper, 2008).
56. As one further note for those who believe that it makes no sense that Hamas could both be willing to "coexist" with Israel and simultaneously maintain an ideology that insists that Israel cannot legitimately exist, we point to a roughly analogous paradoxical situation familiar to every Israeli—specifically, that of the modern Orthodox community in Israel known as *dati le'umi* (national religious). Ideologically, its adherents accept the desirability, even necessity, of a *halachic* state—that is, one based on Jewish religious law. In practical terms, they are satisfied with the democratic and secular nature of Israel's political structure. Although their ideology diverges sharply from their practice, it has caused little friction in most aspects of their lives, including in their political activities. It is true that for some this arrangement has broken down in recent years, leading, among other things, to the demise of the National Religious Party. But the analogy holds, and the arrangement worked satisfactorily for many decades.
57. Taghreed el Kodary and Ethan Bronner, "Addressing U.S., Hamas Says It Grounded Rockets," *New York Times*, May 4, 2009, www.nytimes.com/2009/05/05/world/middleeast/05meshal.html (accessed May 5, 2009).

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